Lesbian and Gay Rights in Historical Perspective

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Until June 1969, when the New York City police raided the Stonewall Inn and arrested the bar's lesbian, gay, and transgender patrons, most gay people were forced by laws and social attitudes to live in the shadows of public life. The legal and cultural landscape held no place for gay people except in prison, mental health institutions, and the closet. The laws and practices that justified the police raid on the Stonewall Inn were themselves reflective of this attitude. At the time, raids on gay-frequented bars were commonplace. Local laws across the country made it illegal for homosexuals to congregate in public places or for men and women to "commit" same-sex acts. State liquor authorities regularly closed down bars suspected of having a gay clientele.

In addition, the majority of states criminalized sexual contact between two men or two women, even when it occurred in the privacy of their homes. Federal law allowed the Immigration and Naturalization Service to interrogate foreign travelers to the United States about their sexual orientation and to bar them from entering the country if they were suspected of being gay or bisexual. From the Comstock-phobic 1920s through the AIDS-phobic 1980s, gay people were considered a security risk. Many were denied or fired from federal jobs in agencies that required employees to obtain security clearances. The security-risk rationale was also one of the rationales for barring gay people from serving in the military. The government regularly removed children from the homes of their gay parents, denied gay people professional licenses necessary to practicing law or medicine, confiscated gay-related magazines, newsletters, and books, and refused to allow gay student groups to exist visibly on campus. Certainly within this regime of repression, there were no laws that prohibited discrimination, criminalized hate crimes, or recognized family relationships. Gay people were nameless. When they did dare to make themselves known publicly, the consequences were often devastating.

While gay and lesbian groups such as the Mattachine Society and the Daughters of Bilitis began to form in the 1950s, they, for the most part, offered an underground social venue for gay men and lesbians to find each other outside of...
the bars or known public sex locations. Though many within these groups advocated for a more public role in changing the laws and attitudes that made their lives so difficult, the task of Stonewall is credited with irretrievably unleashing the fury and frustration of gay, lesbian, and transgender people. In contrast to prior police raids, when gay bar patrons would try to flee the police or quietly attempt to arrest and deter public humiliation when their names were reported in the paper, the Stonewall patrons that night spontaneously fought back, lighting the fire of the nascent gay liberation movement.1

Fast forward to a mere 34 years to a world in which lesbians and gay men are able to live openly in most parts of the country and the law is in the process of changing to accommodate growing social acceptance. Early university resistance to gay student groups on the grounds that the groups promote engagement in illegal sexual activity resulted in universal support by appellate courts across the country for the right of gay people under the First Amendment to organize and receive official status as a student group. Now, gay/straight alliances are a growing phenomenon in high schools and some junior high schools across the country.

The United States Supreme Court is on the brink of spending decades of laws that allow states to convict and imprison lesbian and gay couples who dare to have sex with each other in the privacy of their own home, a ruling that would constitute a major landmark in the history of the gay community in the United States. Sodomy laws, after all, have housed over lesbians and gay men like the sword of Damocles. The dual threat of criminal prosecution and social persecution as a result of being labeled “criminal” has forced generations of lesbians and gay men into hiding. And now, the possibility of adding the community of the laws that were so central to their oppression and denial of dignity seem within reach.

In many ways, sodomy laws are to the gay community what segregation is to the African American community and denial of reproductive freedom is to women—a deliberate reminder by the state that a person is not fully free to chart his or her own course in life.

The United States Census Bureau now allows unmarried partners to be counted in the census, opening the way to identifying same-sex unmarried couples. In 2000, the census data confirmed the "we are everywhere" slogan of the gay community in its finding that same-sex coupled households were counted officially in 99.5% of the counties in the United States. Given that so much public policy is drawn from census data findings and that successful civil rights advocacy is often dependent upon "proving" certain facts about the constituency, the ability to actually be counted carries with it tremendous significance for future law making and policy making. Even without the census data, however, it was widely acknowledged that a growing number of lesbian and gay couples are having and raising children together—a phenomenon virtually unheard of 20 years ago. Increasingly, they are raising their children with the legal sanction of the state. Most states implicitly or explicitly allow gay people to adopt children, and many have come a long way in considering the claims of a gay parent as being equal to those of the straight parent in post-separation child custody proceedings.
In contrast to 74 years ago, lesbians and gay men serve openly throughout all levels of government (except within the United States military, where federal law mandates discharge for anyone who comes out) and the private sector. Thousands of employees, both public and private, bar discrimination against their lesbian and gay employees and now recognize their relationships by extending employment benefits such as health insurance and bereavement to unmarried domestic partners. The states of Hawaii, Vermont, and California have led the way in passing state laws recognizing lesbian and gay couples. Relationships. While the right to marry remains elusive for the moment, serious challenges to discriminatory marriage laws are under way in New Jersey and Massachusetts, and the Connecticut legislature has been moving steadily toward changing its laws to allow same-sex marriage. And, in a long overdue development, a small, but growing, number of city councils have passed laws banning discrimination based upon gender identity, thus recognizing the civil rights of transgender people.

As with all social change movements, we evolve from each other. The ability of the lesbian/gay/bisexual/transgendered (LGBT) movement to evolve and articulate its place in society over a debt to those who came before and who worked alongside. Among them are the labor movement of the 1930s, for directing our national focus on workplace conditions; the civil rights movement of the 1950s and 1960s, for creating a framework for civil rights that all have benefited from; the feminist movement of the 1970s and the animal movement of the 1960s, for establishing basic freedoms to demonstrate against and dissent from the norms and policies governmental society at any time; the reproductive rights movement of the 1960s and 1970s, for drawing the line at state interference with decisions as intimate as whether to have a child; and the women's rights movement of the 1960s, 1970s, 1980s, and 1990s, for continuing to challenge gender stereotypes and patriarchal structures that keep women, gay men, lesbians, transgenders people, and all gender non-conformists in the marginalized reaches of society.

Of course, there is still a very long way to go. The successes, while many in a relatively short time, still seem limited to removing legal and social obstacles rather than affirmatively furthering the dignity and sense of equality with which LGBT people should be able to live. In the immediate aftermath of Stonewall, for example, the gay community approached the American Psychiatric Association (APA) about reconsidering its official and professional views that homosexuality is a mental illness. The mental illness framework rested on shaky ground. Much of what stood as research in the area was conducted among prisoners and institutionalized patients, many of whom faced a multitude of social adjustment and mental health issues. In addition, as interest in sexuality as a field of research grew, the mental illness framework for homosexuality quickly became discredited by researchers like Dr. Evelyn Hooker, who famously challenged her professional colleagues to review the psychological profiles of anonymous men and identify those who were gay. Thus, of course, failed miserably. Dr. Hooker's study seriously undermined the idea that gay men have a common psychological profile and that it is uniformly one of mental instability. Others like Dr. Alfred Kinsey's human
sexuality to be much more varied than was previously thought. In his famous Kinsey scale, he charted his subjects along a zero to six-point continuum between exclusively heterosexual (0) and exclusively homosexual (6). His findings helped substantiate the notion that sexuality is not about identity but about desire.

Despite the decision in 1974 by the APA to remove homosexuality from its list of diagnosable illnesses, the power of its prior policy still reverberates. Courts continue to rely on the cultural view of psychological instability to deny gay parents their children, to keep gay teachers out of the schools, and to send the message that fearing about homosexuality in schools should be disapproved. Further, no federal law bars employers, landlords, and others from discriminating against LGBT people, and more than 75% of the states have failed to ban sexual orientation-based discrimination. No state allows gay couples to marry. The United States Congress passed the Defense of Marriage Act barring the federal government from recognizing any state law allowing same-sex marriage and requiring each state that it did not recognize any same-sex marriage performed in another state. In fact, nearly 75% of the states have passed laws officially barring the state from ever recognizing gay marriage. Nevada has gone so far as to amend its state constitution to bar any form of recognition of gay relationships, including domestic partnerships. LGBT students who are harassened or abused in high school and middle school by their peers, and even sometimes by their teachers, have very little legal recourse to stop it.

By global standards, the United States is quickly losing ground as a symbol of full citizenship. A growing number of countries have recognized lesbian and gay relationships by extending most or all of the benefits of marriage. In fact, two countries allow same-sex marriage: Holland and Belgium. The supreme courts of South Africa and Canada have incorporated more contemporaneous perspectives on human rights into their decisions in gay-related cases than seems ever possible in the United States. The European Court of Human Rights has struck down antidiscrimination laws and interpreted sex discrimination laws to allow for domestic partner benefits. A number of Latin American countries and municipalities have extended nondiscrimination protections to lesbians and gay men. In international and domestic human rights law, sexual freedom is increasingly viewed as a right as basic as other social and political rights.

By historical standards, the gay rights movement is still quite young and has much still evolving. It has benefited greatly from movements and ideas that have come before. The civil rights, sexual freedom, and economic justice frameworks that lie at the core of advocacy for women and people of color have fed a helping hand to every movement that has succeeded them. At the same time, each constituency is unique and faces distinct challenges in its quest for equality and freedom. Although the morality of women deciding to terminate a pregnancy or of inter racial couples marrying has played a significant role in the struggles to change laws and practices affecting women and people of color, the core of the opposition to the LGBT community has been and continues to be premised on the idea that being gay is itself immoral, whereas being a woman, black, or Asian is not. It is not.

As a result, the ongoing work of the gay rights movement is that of
challenging systems of morality instilled for no reasons other than preserving cer-
tain social norms. To this end, perhaps the Texas sodomy law case now pending
before the Supreme Court will usher in a new stage for the gay rights movement—
a stage in which the idea of sexual freedom is considered as much a core of consti-
tutional rights and social justice as political and civil rights have been assumed to
be, a stage in which lesbian, gay, bisexual, and transgender people can concentrate
fully on building a future rather than tearing down the vestiges of the past.

NOTES

1. Contemporaneous accounts of those responsible for what became known as the
"Stonewall Rebellion" indicate that Puerto Rican drag queens and lesbians played promi-
nent roles in the spontaneous initial resistance, in contrast to the mostly white, male, and
middle-class image of the gay rights movement since then. The Stonewall was the only go-
nightspot that allowed dancing and thus drew a mixed crowd. The Village Voice reported at
the time that as the bartender, bouncers, and several patrons peacefully surrounded the
area when a customer angrily resisted arrest and put up a struggle that "the scene became
explosive...Almost by signal the crowd erupted in cobblestone and bottle fanning." See
J. Mishler and D. Price, Counting Justice: Gay Men and Lesbians v. The Supreme Court
(Bar Books, 2001).

2. States traditionally recognize marriages performed in other states. For instance, a
couple married in Illinois who wish to vacation in Massachusetts do not need to remarry in
Massachusetts in order to be acknowledged as a married couple. By the same token, the fed-
eral government generally respects the authority of each state to declare who is allowed to
marry and will grant federal benefits and privileges as long as the couple has a legal mar-
rriage in their state. However, Congress and many state legislatures have enacted schemes
that would prohibit couples in same-sex marriages, should that ever come to pass, from hav-
ing equal respect across state lines or from the federal government.

Suggestions for Further Reading

1987.


Aptheker, E. Women's Legacy: Essays on Race, Sex, and Class in American History.
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